

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DEREK R. PEARSON,)	Case No.: 1:06 CV 1974
)	
Plaintiff)	
)	
v.)	JUDGE SOLOMON OLIVER, JR.
)	
UNIVERSITY HOSPITALS OF)	
CLEVELAND, INC.,)	
)	
Defendant)	<u>ORDER</u>

The above-captioned case arises out of Plaintiff Derek R. Pearson's ("Plaintiff") claim that his former employer, Defendant University Hospitals of Cleveland, Inc. ("Defendant"), discriminated against him in violation of the Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.* Defendant filed a Motion for Summary Judgment (ECF No. 32), which the court referred to Magistrate Judge Nancy Vecchiarelli for preparation of a Report and Recommendation. On March 12, 2008, the Magistrate Judge filed her Report and Recommendation, recommending that Defendant's Motion for Summary Judgment be granted. (ECF No. 41.) Specifically, the Magistrate Judge found that Plaintiff's disability discrimination claim failed because Plaintiff did not meet his burden of proving that Defendant's legitimate, nondiscriminatory reason for firing Plaintiff (absenteeism) was mere pretext. The court granted an extension of time for each party to file its Objections to the Report and Recommendation by April 7, 2008.

Defendant timely filed its Objections. (ECF No. 44.) Although Defendant agreed with the overall decision by the Magistrate Judge that summary judgment should be granted in Defendant's favor due to Plaintiff's failure to show pretext, Defendant objected to the Magistrate Judge's findings that: (1) there was a genuine issue of material fact regarding whether Plaintiff was disabled; and, (2) Defendant bore the burden of proving that attendance was a business necessity with regard to whether Plaintiff was otherwise qualified to do his job. After careful review of the Magistrate Judge's Report and Recommendation and all other relevant documents, the court finds that the Magistrate Judge's conclusion that Plaintiff failed to demonstrate pretext is fully supported by the record and controlling case law. Consequently, the court finds that it is unnecessary to address Defendant's Objections to other portions of the Report and Recommendation. Furthermore, as of the date of this Order, Plaintiff has not filed any Objections to the Report and Recommendation. By failing to do so, he has waived the right to appeal the Magistrate Judge's recommendation. *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Accordingly, the court adopts as its own the Magistrate Judge's Report and Recommendation (ECF No. 41) as to pretext. Therefore, Defendant's Motion for Summary Judgment (ECF No. 32) is granted.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

April 18, 2008